

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HAROLD L. PHILLIPS	§	
	§	
VS.	§	CIVIL ACTION NO. G-04-006
	§	
STATE OF TEXAS, ET AL.	§	

REPORT AND RECOMMENDATION

On March 3, 2006, this Court convened a Scheduling Conference in the above-styled and numbered cause. Plaintiff, Harold L. Phillips, despite actual notice of the Conference failed to appear. The Defendants appeared through counsel, Assistant Attorney General Lindsay A. Todd. Upon inquiry, Todd informed the Court that Phillips had failed to appear for his noticed deposition; had failed to timely respond or object to properly served Requests for Admissions, Interrogatories and Requests for Production; and had repeatedly refused to confer with her regarding his failure to make or cooperate in discovery.

In response to the previously filed "Defendant's Motion to Enlarge Time of the Discovery Deadline Due to Plaintiff's Failure to Attend His Deposition" this Court entered an Order dated February 9, 2006, which, *inter alia*, warned Phillips that his failure to cooperate in discovery could expose him to sanctions under Rule 37 of the Federal Rules of Civil Procedure. Nevertheless, Phillips has, without any justification, abused the discovery process.

For the foregoing reasons, it is **RECOMMENDED** that appropriate sanctions be imposed upon Phillips.

It is further **RECOMMENDED** that Phillips' Complaint be **DISMISSED with prejudice**.

It is further **RECOMMENDED** that Phillips be ordered to pay to the Defendants attorney's fees in the amount of **\$1,500.00** and reasonable expenses in the amount of **\$1,300.00** as a result of his discovery abuses.

The Clerk **SHALL** send copies of this Report and Recommendation to the Plaintiff. Plaintiff **SHALL** have until **March 24, 2006**, to file written objections to the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(C). The Objections SHALL be mailed to the United States District Clerk, P.O. Drawer 2300, Galveston, Texas 77553. Any Objections filed **SHALL** be contained in a written document specifically entitled "Objections to the Report and Recommendation of the Magistrate Judge", which will then be forwarded to the District Judge for consideration. Failure to file objections within the prescribed time shall bar an aggrieved party from attacking on appeal the factual findings and legal conclusions accepted by the District Judge, except upon grounds of plain error.

DONE at Galveston, Texas, this 3rd day of March, 2006.



John R. Froeschner
United States Magistrate Judge